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NO. 85-66

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

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THE STATE OF FLORIDA,

Petitioner,

-vs-

CARLOS LUIS ARANGO,

Respondent.

---

PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF FLORIDA

---

RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTION PRESENTED FOR REVIEW

WHETHER THERE IS NO CONFLICT BETWEEN ANY OTHER DECISION AND THAT OF THE FLORIDA SUPREME COURT, WHICH HELD THAT MR. ARANGO WAS DEPRIVED OF A FAIR TRIAL BECAUSE THE STATE DELIBERATELY FAILED TO DISCLOSE TO MR. ARANGO THAT A PISTOL, PURCHASED TWO DAYS BEFORE THE MURDER AND REGISTERED TO ONE OTHER THAN THE DEFENDANT, HAD BEEN FOUND UNDER THE BALCONY OF THE MURDER SCENE AND WAS IMPOUNDED AND TESTED BY THE STATE, NOTWITHSTANDING HIS SPECIFIC REQUEST FOR SUCH EVIDENCE.

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---

Carlos Luis Arango, in forma pauperis, through undersigned counsel, respectfully requests that this Court deny the Petition for Writ of certiorari seeking review of the Supreme Court of Florida's Opinion in this case. That Opinion of the Florida Supreme Court is reported at Arango v. State, 467 F.2d 692 (Fla. 1985) [A.2-5].[1]

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[1]References to the appendices attached to this brief are cited by the abbreviation "A" followed by the page number.

## STATEMENT OF THE CASE

The Statement of the Case submitted by the Petitioner (hereinafter the "state" or the "prosecution") is inaccurate because it is incomplete and it misrepresents certain uncontradicted "facts" as being disputed.[2] Because the State of Florida omits large portions of relevant facts necessary to determine the issue, Respondent, (hereinafter "Mr. Arango") revises the Statement of the Case as follows:[3]

When the police arrived at Mr. Arango's apartment in response to reports of shots having just been fired, they found the dead body of Jairo Posada lying in the bedroom amidst evidence of a great struggle. The bedroom had a sliding glass door which led to a balcony facing the parking area for the apartment complex. The only other person in the apartment when the police arrived was Mr. Arango. Two guns were found inside the apartment and one silencer. See, Arango v. State, 411 So.2d 172 (Fla. 1982) for additional facts.

The lead homicide investigator, Deborah Young, instructed Detective Angel Nieves to interview Mr. Arango at the scene because Arango spoke only Spanish (R. 161)[4]. Mr. Arango gave a statement in Spanish to Detective Angel Nieves as to what had happened. Mr. Arango immediately told the detective that he was innocent. Detective Nieves testified at the Brady[5] hearing that Mr. Arango described how "three unknown males forced their way into the

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[2]Petitioner misleads this Court on pages 10, 11, and 24 of the petition. See footnotes 6, 7, 8, and 10 infra for discussion.

[3]Mr. Arango accepts as generally accurate the petitioner's procedural description of the case in state courts, which is described in detail in Arango v. State, 437 So.2d 1099 (Fla. 1983), (remanding for a Brady hearing). However, the state omitted any reference to the federal procedural history, e.g., Arango v. Wainwright, 563 F.Supp. 1181 (S.D.Fla. 1983) rev'd, 716 F.2d 1353 (11th Cir. 1983) reh. denied, 739 F.2d 529 (11th Cir. 1984) cert. denied, __U.S.__, 105 S.Ct. 811, __L.Ed.2d__ (1985).

[4]References to the Record before the Supreme Court of Florida are contained in this brief as 'R.' for Record; 'F.R.' for former adopted record; and 'Supp.R.' for Supplemental Record.

[5]Brady v. Maryland, 473 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

apartment and cornered them [Arango & Posada] in the dining room area." (R. 431). Each of the three intruders had guns.

Detective Nieves further testified that Arango gave him a description of the three intruders, and told how after they brutally beat and killed Posada, they escaped before the police came, and one jumped off the bedroom balcony which led to the parking lot:[6] Detective Nieves testified for purposes of the Brady hearing:

> DETECTIVE NIEVES: ...He [Arango] said two of the subjects fled out of the kitchen door, and one of them jumped off of the bedroom balcony.
>
> He went on to say -- you have a copy of the report -- that this subject, listed as Number 1, is the one that jumped off the balcony.

(A. 8.; R. 433.) [Emphasis added.] At no time did Mr. Arango ever change this defense. He always asserted his innocence.

While at the scene and again at the station, lead Investigator Young discussed with Detective Nieves his conversations with Arango (R. 178). Not only the police, but also the prosecutor was aware of Mr. Arango's defense prior to trial. (R. 336).

By the time the interior of the apartment had been processed, it was dark outside and no physical inspection was made of the area outside the apartment under the balcony. (R. 322; 110).

The next day, while Mr. Arango was in custody, a uniformed police officer, Dennis Lake, notified the lead homicide investigator in the Arango case, Deborah Young, that a loaded semi-automatic pistol and casings had been found directly under the balcony[7] of Mr.

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[6] On page 10 of Petitioner's brief, the state attempts to mislead this court by writing that "this story was testified by Defendant at his trial and he claimed to have made these statements to Detective Nieves." (Emphasis added.) (Petition at 10-11.) It is undisputed in the stipulated record that Detective Nieves testified that Mr. Arango made these statements immediately upon being questioned at the scene. See transcript attached as A. 8-9.

[7] The state in its Petition at page 11 misleads this Court by stating that "Defendant claimed that a pistol was found under the balcony of his apartment on the day following the crime and that it was turned over to the police investigating the murder." (Emphasis added.)

It is true that Mr. Arango only "claimed" those allegations before the Florida Supreme Court in 1983 upon his Motion to Relinquish Jurisdiction for a Brady hearing. The Court then granted a stay of execution and remanded for a Brady hearing. Arango v. Wainwright, 437 So.2d 1099 (Fla. 1983).

However, upon remand, the uncontradicted and stipulated evidence conclusively showed that this "claim" was accurate. Both the

Arango's apartment[8] by a boy who lived in the apartment complex.[9] (A. 10-11; R. 182-205).

Upon instructions from Detective Young, the officer impounded the gun and casings and sent them to the police crime lab (R. 186). He cross-referenced the Lab Analysis Request to the murder that took place in Arango's apartment by writing the homicide case number on the request with the special notations as follows:

> Summary of Case: Possibly involved in a homicide at 5525 S.W. 77 Court, Case #97865-A.
>
> Special Analysis requested: Contact Detective D. Young at 630 for further information.

(A. 13; R. 186-7, 203).

The police firearms examiner, Robert Kennington, testified that he had also made certain additional notations on the police property receipt of this third gun (A. 12). The firearms expert wrote a note on the property receipt (A. 12) indicating that Roy Kahn was the prosecutor assigned to the homicide case to which this gun was cross-referenced, i.e. Mr. Arango's case. He testified that it was his usual practice to send the prosecutor a copy of his Lab Report, but he could not remember if he had in fact notified Roy Kahn in this case. (R. 216-218; 235-237).

The police property receipt (A. 12) for the pistol is clearly marked as "trial evidence" and "lab evidence." (R. 251). The firearms expert testified at the Brady hearing that no accurate lab report was now available on this pistol due to a mistake on his

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trial court and the Florida Supreme Court made findings of fact that a pistol registered to Antonio Garcia was found under the balcony of Mr. Arango's apartment. One day following the crime it was turned over to police investigating the murder. 467 So.2d 692, 693 (1985).

[8]The state (in it's petition at page 24) attempts to downplay the location of the deliberately withheld third gun. The stipulated record contains uncontradicted testimony that the third gun was located on the ground one foot to the right beneath the railing of Mr. Arango's second-floor bedroom balcony. (See, police report at R. 199; testimony of Tom D'Azevedo at R. 292; and Diagram labeled Defendant's Exhibit F.) Defendant's Exhibit F diagrams the exact location of the third gun as marked by the circled number 2, and is further denoted by a white area with little black dots in it. (R. 291-292). Florida's Supreme Court made a finding of fact that the gun was "located in a place that would support Arango's defense. 467 So.2d at 694 (A. 3).

[9]At trial Mr. Arango gave similar testimony that three armed men committed the murder, then fled, although he did not know whether the one who passed by the balcony window actually jumped out.

Lead Homicide Investigator Young had traced the ownership of the gun (R. 132). The police learned that the gun was purchased two days prior to the murder on March 26, 1980, from the Tamiami Gun Shop and registered to a man named Antonio Garcia[10] according to the registration receipt which was in police files (A. 14; R. 403). Detective Young attempted to locate the owner (R. 118), but did not vigorously pursue the search (R. 132-133). 467 So.2d at 693.

The prosecution[11] never revealed to Mr. Arango or his defense counsel any information about this third gun, despite both the general request for discovery and the specific request for physical evidence and police investigation reports corroborating Arango's defense theory as told to the detective that three armed men committed the murder and one had escaped over that bedroom balcony (R. 351).

Prior to trial Mr. Arango had timely and specifically requested in writing the following, inter alia:

> 1. Any witness accounts or statements or physical evidence indicating that other persons in addition to the Defendant and the decedent were in the Defendant's apartment at the time of the homicide.
>
> 2. Any physical evidence indicating that the Defendant did not fire the murder weapon or that another person did, in fact, fire the murder weapon.
>
> 3. Any physical evidence or witness statements which corroborate the Defendant's statements to Detective Diaz that other Latin males entered the[12] apartment and committed the homicide.
>
> 4. Any police investigation report made to the police which tends to establish the Defendant's innocence or to impeach or contradict the testimony of any witness whom the State will call at the time of the trial of this case.

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See, 467 So.2d at 693 (A. 3).

[10]The state at p. 24 of its Petition misleads this court by stating that "an unidentified gun" was found. This is a material misrepresentation, since the stipulated record shows that the lead homicide investigator traced the ownership of the gun to Antonio Garcia and had a copy of the registration in her police file. See, A. 14.

[11]Since the police are part of the prosecution team, throughout this brief when reference is made to "the prosecution" or the "state," the actions or omissions of the police are included. The term the "prosecution" is thus distinguished from references specifically to the "state's attorney" or the individual "prosecutor" as used herein.

[12]This reference to Detective Diaz is obviously a reference to Detective Nieves. Since Mr. Arango speaks only Spanish, Detective Nieves was the only officer to whom Mr. Arango could

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(A. 6-7; F.R. 67-68a; R. 518-519) [Emphasis added].

Notwithstanding that request, the prosecution did not reveal to Arango or his attorney that the police had in its possession all during the trial a semi-automatic pistol and casings that had been found on the day following the murder under the same bedroom balcony from which Arango had said one of the armed murderers had escaped.

Not only did Arango's defense attorney make written requests for the exculpatory evidence, but he also took the deposition of lead homicide investigator (R. 150-181). In her deposition of June 11, 1980, Detective Young never gave defense counsel any information about the gun despite his repeated careful questioning, for example, "what was your next involvement in this case," (R. 166; 168; 170) and "have you done anything else concerning any involvement in this case?" (R. 170-171). The lead investigator never mentioned that the gun had been found nor did she reveal her investigation of its purchase and registered owner, even though written reports of those investigations were in her police file.

Throughout the trial the police had the third gun in its possession in the property room (R. 260,261). Mr. Arango was deprived not only of the physical gun for preparation of his defense, but also of all the investigative reports and circumstances surrounding it. The state did not tell him that casings had also been found near the gun. The state did not tell him that the gun was purchased only two days before the murder. The state did not tell Arango that they knew the name and address of the registered owner and place and time of purchase. The state did not tell Mr. Arango the results of ballistics or other tests which were or could have been performed on the gun. Nor did Mr. Arango have the opportunity to conduct blood or fingerprint tests or otherwise use this critical physical evidence to develop his defense as told to the detective at the crime scene (R. 312-341; 342-406).

Mr. Arango learned of this deliberately withheld evidence three years after his trial and subsequent to his direct appeal, only

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and did communicate. Further since Detective Nieves testified at the bond hearing and at trial, it is clear that the state knew to whom this request referred.

through the efforts of the private investigator of new counsel. Investigator Tom D'Azevedo testified at the Brady hearing how he inadvertently discovered the records of this third gun while investigating another aspect of the case (R. 267-311).

At the Brady hearing the lead investigator admitted that at the time of the incident she "was still relatively new in the section" (R. 116). The trial prosecutor testified at the Brady hearing that he had not worked with the lead investgator in that capacity before and "I believe that was in fact her first homicide as a lead detective, if I recall correctly." (R. 325).

The lead investigator further testified at the Brady hearing that she did not advise the prosecutor about the third gun because she made an independent decision that the third gun was not relevant to the Arango prosecution. (R. 126; 128; 140-147).

However, Detective Young later testified at the Brady hearing that her opinion has changed with respect to whether she should have notified the state attorney regarding the third gun (R. 147).

Roy Kahn, Esquire, the original trial prosecutor, testified at the Brady hearing that neither Detective Young, Technician Kennington nor anyone else apprised him of the existence of the third gun[13] (R. 317). The prosecutor testified:

> ROY KAHN [prosecutor]: Had I been aware of a gun being found the day after the homicide, in the vicinity of the homicide, that information would have been made available as per discovery and as per Brady....[Emphasis added.]

(R. 320).

Mr. Arango's conviction and sentence of death by electrocution rested solely on slim circumstantial evidence. Mr. Arango immediately made a statement that he was innocent and steadfastly maintained his innocence throughout all proceedings. Fingerprints lifted from the murder weapons were not those of Mr. Arango. Nor were his fingerprints found on any other weapon used to injure Mr. Posada. Although latent fingerprints of value were found on the weapons, police were unable to identify them. There were no eyewitnesses, other than Mr. Arango.

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[13]The state attorney's original Arango trial files were lost after the trial and later reconstructed for purposes of collateral proceedings (R. 328). Therefore no original notes or police

However, there was no physical or other evidence presented to the jury which could support Mr. Arango's defense that three armed men murdered Posada and one escaped over the bedroom balcony. The jury was faced with only inflammatory evidence of a brutally injured Colombian found dead, with a wound to his penis, in Mr. Arango's apartment. Only two guns, one with a silencer, were presented to the jury, despite Arango's testimony that there were three armed men in the apartment. The police found the dead body of Jairo Posada, a Colombian citizen, in Luis Carlos Arango's apartment in Dade County, Florida. Mr. Arango was the only other person found in the apartment. A bag containing about two pounds of cocaine and currency were also found.

At trial the prosecutor told the jury the state has "a strong circumstantial case" because "the only evidence is circumstantial pieces, strong pieces all pointing fingers to this man [Arango]" (F.R. 782).

Then the prosecutor exhorted the jury to find Mr. Arango guilty because the physical evidence did not corroborate Mr. Arango's account that three others killed Posada, then one of them jumped off the bedroom balcony. But the jury was falsely told by the prosecutor:

> This was the evidence, nothing was kept from you, whatever we had is on the table. You make the decision. I've done my job. [Emphasis added.]

(F.R. 821).

The prosecution's entire case was based on the fact that Mr. Arango's unsupported testimony of the facts did not "jive with the physical evidence" (F.R. 778). In closing argument the prosecutor argued:

> PROSECUTOR: There is no possibility of a doubt ... because of the physical evidence, ladies and gentlemen, the sixty some exhibits, cannot be made to tell anything but the truth. Nobody can come up here and accuse the physical evidence of lying on the stand, nobody...

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reports could be produced in response to the subpoena for the Brady hearing. Defense counsel, however, testified that he had "open file discovery" and never saw any report or reference to the third gun in the prosecutor's files (R. 352).

> It's tangible, you can hold it. You can feel it. It seems you can even smell it, but it's real, it's not a story, it's real.
>
> Now, what the defendant said on the stand, that's a story and that's not real because it does not jive with the physical evidence...

(P.R. 778) [Emphasis added].

That was correct only because the prosecution deliberately concealed pivotal physical evidence that would have "jived" with Mr. Arango's statement made to the officer at the scene. The prosecutor persuasively explained to the jury in closing argument why, without the concealed evidence, Mr. Arango's testimony did not create a "reasonable doubt":

> PROSECUTOR: Now, the projectiles, they match. It's all pieces of evidence. If they didn't match, if it wasn't .22 calibers in this man's head that caused the bullet holes, if it was something else, I'm sure the jury would say, Mr. Arango, your story makes sense...
>
> Ladies and gentlemen, reasonable doubt, that's the key. The defendant took the stand in this case, gave you a story, and the facts that he gave you are inconsistent with the state's case but that does not create a reasonable doubt...You have got to go by the evidence as to what occurred, by the evidence in this case.
>
> ...[B]y him taking the stand, we have two sides to a story but that does not create a reasonable doubt. That creates a possibility of a doubt and there is a difference.

(P.R. 793-794).

The jury, following the prosecutor's reasoning, convicted Mr. Arango of first degree murder and possession of cocaine. The jury recommended and the Court imposed a sentence of death by electrocution for the murder charge. Mr. Arango's Amended Motion for Post-Conviction Relief Re: Brady Violation was denied by the trial court.

The Supreme Court of Florida reversed that Order, finding that "the state's suppression of the recently purchased gun's discovery ...deprived [Mr. Arango] of a fair trial," and "that the outcome of the trial might have been affected." 467 So.2d at 694, 695 (Fla. 1985) (A. 4-5.) The Supreme Court of Florida took into consideration that "the prosecutor was able to argue to the jury that 'nothing was kept from you, whatever we had is on the table,' that Arango's testimony was 'not real because it does not jive [sic]

with the physical evidence' and, therefore, 'does not create a reasonable doubt.'" 467 So.2d at 694 (A. 4-5). Based upon those circumstances, the highest court of the State of Florida held "that due process requires retrial." 467 So.2d at 694-695 (A. 4-5). That is the order from which Petitioner, the State of Florida seeks review.

## REASONS WHY THE WRIT SHOULD BE DENIED

1. No Conflict Exists With Any Decision.

The state's petition claims that the Supreme Court of Florida applied the wrong standard in determining that under the circumstances a new trial was warranted because the state deliberately concealed information that a pistol, purchased just two days before the murder and registered to a man other than Mr. Arango, had been found directly under the balcony of the murder scene and impounded and tested by the state.

The state bases its petition on the fact that the Supreme Court of Florida made a finding that, prior to trial, Mr. Arango had made a specific request for such information. The state is seeking a writ of certiorari to correct what it sees as an error in such determination because the state argues that the request was a general rather than specific request.

The state's argument overlooks this Court's recent opinion of United States v. Bagley, __U.S.__ (1985) (Case No. 84-48, opinion filed July 2, 1985) [53 USLW 5088], which restates the standard of materiality applicable to nondisclosed trial evidence without distinguishing the three situations described in Agurs.[14]

Even if the state had based its petition upon some conflict with Bagley, supra.,[15] no reason would exist for granting the petition. The opinion of the Supreme Court of Florida is consistent with the standard enunciated by this Court in Bagley.

A review of the reasoning in the Florida Supreme Court decision shows that the court based its reversal upon a due process standard of fairness. The totality of circumstances surrounding not only the deliberate concealment but also the particular prosecutorial trial comments required reversal. This is especially true since the conviction was obtained on thin circumstantial evidence. As additional grounds for reversal the court "considered" the adverse effect that the prosecutor's failure to respond might have had on

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[14] United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976).

[15] The State's Petition for Writ of Certiorari mentions the Bagley decision only once, in a footnote to the last sentence of its petition at p. 26.

the preparation or presentation of the defendant's case in light of the request for favorable evidence.

The court below first determined that the concealed evidence was favorable to Mr. Arango's defense. The court stated:

> Present in the instant case is state suppression of evidence favorable to the defense following a defense request for disclosure. Although it may be a coincidence, the fact remains that the gun was recently purchased and located in a place that would support Arango's defense. Our final inquiry is whether the suppressed exculpatory evidence was material. (Emphasis added.)

467 So.2d at 694 (A. 4). The court noted that "the prosecutor testified (at the Brady hearing) that he would have informed the defense about the pistol had he known of its discovery and proximity to the homicide." 467 So.2d at 693 (A. 3).

Although the court below did not have the benefit of the Bagley decision, it took into consideration the "totality of circumstances"[16] in determining the degree of prejudice suffered by the deliberate concealment after a specific request. The court noted that "the defense attorney testified [at the Brady hearing] that production of the gun would have affected his trial strategy." 467 So.2d at 693 (A. 3).

More importantly the court considered the presentation of the prosecutor's opening and closing arguments to the jury which contained inherent untruths about the evidence and inferences to be drawn from the evidence. The court below considered that

> the prosecutor was able to argue to the jury that "nothing was kept from you, whatever we had is on the table," that Arango's testimony was "not real because it does not jive [sic] with the physical evidence" and, therefore, "does not create a reasonable doubt." We find that due process requires retrial under these circumstances.

467 So.2d at 694 (A. 4).

Therefore the court directly considered the affect the non-disclosure had on the truth-seeking function of the adversary process.

It is clear that the Supreme Court of Florida applied the standard announced in United States v. Valenzuela-Bernal, 458 U.S. 858, 874 (1982) that "there was a reasonable likelihood that the

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[16]This court held:

> The Government suggests that a materiality standard more

[concealed evidence] could have affected the judgment of the trier of fact."

Based upon the totality of circumstances considered by the Supreme Court of Florida, its decision rests upon its finding that there is a reasonable probability that the result of the trial would have been different, but for the deliberate concealment of exculpatory evidence under the standard of Washington v. Strickland, __U.S.__, 102 S.Ct. 2052, 8 L.Ed.2d 674 (1984). The Florida Supreme Court clearly expressed its opinion that the deliberately concealed evidence caused "a probability sufficient to undermine confidence in the outcome of the trial." United States v. Bagley, __U.S.__ (Case No. 84-48 opinion filed July 2, 1985) [53 USLW 1084 at 1086]. The absence of those specific magic words does not abrigate the intentions of the court.

Even though the court below made a determination that the request was specific in nature, no automatic reversal was applied under that Agurs standard. Rather the court looked to general due principles and stated that it was "mindful that the goal is...avoidance of an unfair trial to the accused." 467 So.2d at

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> favorable to the defendant reasonably might be adopted in specific request cases. See Brief for United States 31. The Government notes that an incomplete response to a specific request not only deprives the defense of certain evidence, but has the effect of representing to the defense that the evidence does not exist. In reliance on this misleading representation, the defense might abandon lines of independent investigation, defenses, or trial strategies that it otherwise would have pursued. Ibid.
>
> We agree that the prosecutor's failure to respond fully to a Brady request may impair the adversary process in this manner. And the more specifically the defense requests certain evidence, thus putting the prosecutor on notice of its value, the more reasonable it is for the defense to assume from the nondisclosure that the evidence does not exist, and to make pretrial and trial decisions on the basis of this assumption.
>
> * * *
>
> The reviewing court should assess the possibility that such effect might have occurred in light of the totality the circumstances and with an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's incomplete response.

U.S. V. Bagley, __U.S.__, (Case No. 84-48 opinion filed July 2, 1985) [53 USLW 5084, 5088].

694 (A. 4).

Therefore no conflict exists between the decision below and United States v. Bagley, supra., or any other decision. The petition should be denied.[17]

2. General Due Process Standards, By Whatever Name, Required A Retrial.

Here the state relied upon very thin circumstantial evidence to convict Mr. Arango. It was only the total lack of any evidence corroborating Mr. Arango's claim that three armed men were in the apartment that allowed the jury to find that Mr. Arango had single-handedly committed multiple acts of violence upon the deceased, all of which occurred within a five-minute time span according to the medical examiner (T.R. 904).

The probative significance of the "third gun" is not its mere existence, but all of the related information, which the state also concealed, which establishes the inference that there were three armed men in the apartment.

The undisputed fact that the gun was found directly below the bedroom balcony from which Mr. Arango said one of the men jumped immediately elevates Mr. Arango's otherwise unsubstantiated and self-serving statement to a high probability. The additional withheld information leads to the inescapable conclusion that the concealed evidence probably would have affected at least one of the jurors, and indeed "creates a reasonable doubt that did not otherwise exist" that three armed men actually were in the apartment and committed the murder.

In addition to the location of the gun and the fact that it was a "third" gun, the concealed police records conclusively show that the third gun was purchased only two days before the murder by Antonio Garcia from the Tamiami Gun Shop (A. 14; R. 403). Further, the gun was found lying in a cocked position. The record contains the uncontradicted testimony of the private investigator, who was a former Metro-Dade Police Officer that the cocked gun is consistent with either being dropped as someone jumped off the balcony in

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[17] It would be futile to remand, as this Court did in Bagley, for a determination based upon the new standard, because it is clear from the reasoning set forth in the Supreme Court of Florida's

flight or tossed off the balcony (R. 304).

It is the cumulative effect of the sum total of concealed information about the gun that constitutes critical evidence. It is not one piece. The state in its brief seems to overlook the fact that the term "the third gun" is a shorthand term to include all of the withheld information, including the withheld police and lab reports.

In addition to the above valuable defense evidence that was concealed, it is of further import that the state conceded that it subsequently "lost" its records of the lab and ballistics tests that were performed on the gun (R. 207-259). So that at the time of the Brady hearing the police firearms expert testified that although he received the Lab Analysis Request form requesting him to perform tests on the third gun, he was unable to determine what were the results of those tests because he had apparently misfiled his report (R. 207-259). Further the state admitted that the entire original trial file of the State Attorney's office had been lost. (Supp.R. 327-329).

The most persuasive argument that if all of the deliberately concealed evidence had been made available to the defense it probably would have affected the outcome, is that the prosecutor's theme in opening and closing argument was that physical evidence does not tell lies (F.R. 778).[18] The prosecutor repeatedly exhorted the jury to restrict their verdict to the physical evidence and falsely, albeit unknowingly, promised the jurors that "this was the evidence, nothing was kept from you, whatever we had is on the table" (F.R. 821). The state's total case against Mr. Arango was, as the prosecutor told the jurors, "...what [Arango] said on the stand, that's...not real because it does not jive with the physical evidence." (F.R. 778).

The prosecution team prevented Mr. Arango from rebutting those accusations of the prosecutor. The third gun was in the police pro-

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Opinion 467 So.2d 692 (Fla. 1985) (R. 2-5), that basic principles of fairness in the jury system required a new trial regardless of whether the deliberately concealed evidence "would have," "should have," "could have," "might have," or "probably would have" affected the outcome.

[18] The original trial prosecutor conceded that the rookie lead investigator was wrong to withhold the third gun information from Mr. Arango. The prosecutor testified:

perty room at the very moment that the prosecutor told the jurors to look for any physical evidence which could possibly support Mr. Arango's defense that three other men committed the crime, then one armed man jumped off the bedroom balcony.

The prosecutor cleverly explained to the jurors why Mr. Arango's testimony did not create a reasonable doubt necessary to aquit him:

> PROSECUTOR: ...[B]y [Arango] taking the stand, we have two sides to a story but that does not create a reasonable doubt. That creates a possibilty of a doubt and there is a difference.

(R.R. 793-794.)

The jury followed the prosecutor's reasoning and, based upon the false illusion of a total absence of any corroborative evidence, physical evidence or otherwise, the jury found that no reasonable doubt existed as to "whodunit." If all of the concealed information regarding the third gun had been put into the hands of Mr. Arango's trial counsel, it certainly would have created a reasonable probability that the result of the proceeding would have been different. Indeed, under the reasoning put forth at trial by the prosecutor, it would have created a reasonable doubt that did not otherwise exist.

Here the unfairness involved in a conviction under circumstances where such evidence is deliberately concealed from the defendant, is so fundamental as to amount to a denial of due process of law analogous to a situation where a prosecutor allows perjured testimony at trial. The impact upon Mr. Arango is the same regardless of the ignorance of the prosecutor here. Here the jury was essentially asked to disbelieve Mr. Arango's unwaivering claim of innocence because the state deliberately concealed all evidence in its possession which would have supported Mr. Arango's defense.

The facts are similar to those in Trimble v. State, 75 N.M. 183, 402 P.2d 162 (1965) where the state impounded and later mishandled

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> ROY KAHN: Had I been aware of a gun being found the day after the homicide, in the vicinity of the homocide, that information would have been made available as per discovery and as per Brady... [Emphasis added.]

(R. 320.)

certain letters and tapes so that they were unavailable for the defense to use at trial. Since the defendant asserted that the state deliberately suppressed evidence which would have supported his theory of self-defense, the court found the letters and tapes to be material under Brady.

Mr. Arango was unquestionably deprived of his due process right to a fair trial in any sense of the concept. The Supreme Court of Florida correctly reversed Mr. Arango's conviction and remanded for re-trial by applying a standard which is consistent with that enunciated in Bagley, supra.

3. Florida's Supreme Court Was Correct In Finding The Request To Be Specific Under The Agurs Test.[19]

Mr. Arango's request was certainly specific when considered in light of all of the information available to the prosecution at the time the request was made. In Scurr v. Niccum, 620 F.2d 188, 190 (8th Cir. 1980), the Eighth Circuit explained that in determining whether a particular request was specific or general, the court must look to the other knowledge in the state's possession at the time it received the request in order to ascertain whether the request put the state on reasonable notice as to what items were sought.

> [A] request for disclosure of particular information cannot be labeled as either "specific" or general in a vacuum. Rather, the question must be asked whether, under all the circumstances presented by the case, the request was such as to give the prosecution reasonable notice of what the defense desired. In other words, "specificity" is a function of several factors, including the literal language of the defense request itself, the apparent exculpatory character of the evidence sought, and the reasonableness of the explanation, if any, for which the evidence was not exposed or was not considered to be material by the prosecution. [Emphasis added.]

Scurr v. Niccum, 620 F.2d 188, 190 (8th Cir. 1980).

Here the record is uncontradicted that as soon as the police arrived at the scene Mr. Arango made a statement to Detective Nieves that he was innocent and that three armed men committed the act and one escaped over the bedroom balcony into the parking lot (A. 9).

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[19]Since the state addressed this issue in its petition, Mr. Arango is constrained to respond.

> DETECTIVE NIEVES: ...He [Arango] said two of the subjects fled out of the kitchen door, and one of them jumped off of the bedroom balcony.
>
> He went on to say -- you have a copy of the report -- that this subject, listed as Number 1, is the one that jumped off the balcony.

(A. 9; R. 433). [Emphasis added.]

Several police testified at trial that they went out onto the bedroom balcony (T.R. 454-455; 523) but the trial prosecutor, who was also at the scene, testified below that it began to get dark outside so the police failed to make a search of the outside area under the balcony (R. 322; 110).

The state conceded below, however, that the very next day a cocked pistol was found directly under that bedroom balcony along with casings (R. 182-205). The state further conceded that it knew that the gun had been purchased only two days prior to the murder and that it was not registered to Mr. Arango (R. 403). This clearly precludes any argument that the gun had been lying there abandoned forever and strengthens the inference that the gun was connected to the murder. At the very least, it cannot possibly be argued that the gun was not part of the murder scene. One of the concealed police reports states that at the time that Officer Lake found the third gun he contacted lead homicide investigator Deborah Young

> ...who advised the weapon could be related to a homicide at [Arango's address] [Arango's police investigation case number] and the lab could not respond to the scene. Detective Young advised to unload the weapon and impound it as found property.

(R. 199.)

The State conceded below that it had at least the above information at the time Mr. Arango filed the following demand for Brady material:

> 1. Any...physical evidence indicating that other persons in addition to defendant and the decedent were in defendant's apartment at the time of the homicide. [Emphasis added.]

And Mr. Arango further demanded:

> 3. Any physical evidence or witness statements which corroborate the Defendant's statements to Detective Diaz (sic) that other Latin males entered the apartment and committed the homicide.

[R. 6; R. 518-519; T.R. 67-68(a).]

The above requests must be considered in the context of what the

state knew at the time it received these requests. Since the state knew Mr. Arango's only defense included the fact that an armed male leaped off the bedroom balcony, the above demands for favorable evidence certainly provided the state with reasonable notice that any evidence found under the balcony was sought.

Further, since there were no eyewitnesses to the murder[20] and the state's entire case against Mr. Arango was based on the circumstantial evidence found at the scene, the following request specifically put the state on notice that the defense sought police investigation reports and lab analysis reports of any third weapon found at or near the scene which tended to corroborate Mr. Arango's statement of innocence as told to Detective Nieves:

> 4. Any police investigation report made to the police which tends to establish the Defendant's innocence or to impeach or contradict the testimony of any witness whom the State will call at the time of the trial of this case. [Emphasis added.]

(A. 6; F.R. 67-78(a); R. 518-519.)

Finally, even the request for

> 2. Any physical evidence indicating that the Defendant did not fire the murder weapon or that another person did, in fact, fire the murder weapon. [Emphasis added.]

(A. 6; F.R. 67-78a; R. 518-519.)

provided adequate notice to the state, since the "murder weapon" was never established. Although the gun that fired into the decedent was found in the apartment, the cause of death included multiple blunt trauma which could have been caused by the butt of the third gun found directly under the bedroom balcony. In addition, fingerprints were found on the two guns in the apartment, but the prints did not belong to Mr. Arango. We will never know whether a fingerprint on the third gun matched any of the 28 unidentified prints inside the apartment (F.R. 573), because as the state conceded, it lost the lab reports of tests conducted on the third gun and no longer has possession of the gun.

4. The Uniqueness Of This Case Precludes Review By This Court.

The cause presented to this Court involves an unusual twist to

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[20]Here not one of the neighbors who testified was in a position to view the bedroom balcony and therefore there is no evidence in

the usual suppression of evidence situation. The Supreme Court of Florida decided the case after condsidering the peculiar situation where the prosecutor unwittingly lied to the jury, telling them that it was appropriate to find Mr. Arango guilty based upon the thin circumstantial evidence because "[no evidence] was kept from you, whatever we had is on the table," and Arango's testimony was "not real becuase it does not jive with the physical evidence" and, therefore, "does not create a reasonable doubt" 467 So.2d at 694 (A. 4-5).

This was blatantly not true, because, as the prosecutor later discovered, the lead homocide investigator had deliberately concealed physical evidence which would have supported Mr. Arango's testimony and thereby been consistent with the physical evidence and created a reasonable doubt.

The decision of the court below is therefore not based upon an automatic application of pre-Bagley standards regarding specific requests. Rather, Florida's Supreme Court looked to whether the truth-seeking process of the criminal justice system had been subverted. That the state deliberately suppressed evidence in the face of a specific request for favorable evidence was only one consideration in the fact-bound decision to reverse the conviction of Mr. Arango and remand for retrial. Because the decision below turns on its own rare facts, and does not conflict with Bagley, it would establish no new precedent, and should not qualify for review by this court.

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the record capable of rebutting Mr. Arango's claim that one of the armed murderers escaped off the bedroom balcony (See, R.R. 533-537; 538-545; 545-555; 555-559).

## CONCLUSION

For these reasons, Respondent Mr. Arango respectfully requests this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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CHAYKIN, KARLAN & JACOBS
114 Giralda Avenue
Coral Gables, Florida 33134
(305) 446-1220

COUNSEL FOR RESPONDENT

NO. 85-66

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

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THE STATE OF FLORIDA,

Petitioner,

-vs-

CARLOS LUIS ARANGO,

Respondent.

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Carlos Luis ARANGO, a/k/a Luis Carlos Arango, Appellant

v.

STATE of Florida, Appellee

No. 64721.

Supreme Court of Florida.

Jan. 31, 1985.

Rehearing Denied May 14, 1985.

Defendant was convicted of first-degree murder and sentenced to death. The Supreme Court, 411 So.2d 172, affirmed his conviction. Thereafter, defendant sought postconviction relief. The Circuit Court, Dade County, Robert M. Deehl, J., denied his petition, and he appealed. The Supreme Court, 437 So.2d 1099, remanded. On remand, the Circuit Court denied postconviction relief, and defendant appealed. The Supreme Court, Shaw, J., held that: (1) defendant's request for any physical evidence or witness statements which corroborated defendant's statements to detective that other Latin males entered the apartment and committed the homicide for which defendant was charged could be characterized as a specific request for purposes of applying materiality standard in order to determine whether there had been a *Brady* violation which denied defendant a fair trial, and (2) State's suppression of fact that a pistol had been found under defendant's balcony following defendant's specific request for evidence corroborating his statements that other Latin males entered his apartment and committed the murder deprived him of a fair trial.

Reversed, sentence of death vacated and case remanded for new trial.

Adkins, J., dissented.

1. **Criminal Law** ⇐700(2)

State may not withhold favorable evidence in the hands of the police who work closely with the prosecutor.

2. **Criminal Law** ⇐627.6(1)

Elements of a *Brady* violation that deny an accused a fair trial are a suppression by the prosecution after a request by the defense, fact that suppressed evidence is favorable to the defense, and materiality of the evidence.

3. **Criminal Law** ⇐1171.8(1)

Where prosecutor knowingly used perjured testimony, judgment must be set aside if there is any reasonable likelihood that the false testimony could have affected judgment of the jury.

4. **Criminal Law** ⇐627.8(3), 1166(10.10)

Where defense has made a specific request for evidence, judgment must be set aside if the suppressed evidence might have affected the outcome of the trial, however, where the request is general or there has been no request at all, the judgment must be set aside if the suppressed evidence creates a reasonable doubt that did not otherwise exist; latter standard is less strict than demonstrating that newly discovered evidence probably would have resulted in acquittal but requires a greater showing than the specific request standard.

5. **Criminal Law** ⇐627.8(3)

Where there is uncertainty concerning characterization of a request for *Brady* material, the materiality standard applicable to specific requests should be used.

6. **Criminal Law** ⇐627.8(3)

Defendant's request for any physical evidence or witness statements which corroborated defendant's statements to detective that other Latin males entered the apartment and committed the homicide for which defendant was charged could be characterized as a specific request for purposes of applying materiality standard in order to determine whether there had been a *Brady* violation which denied defendant a fair trial.

7. **Criminal Law** ⇐627.8(6), 1166(10.10)

State's suppression of fact that a pistol, purchased two days before the murder, had been found under the balcony of defendant's apartment on the day after the

murder following defendant's specific request for evidence corroborating his statements that other Latin males entered his apartment and committed the murder deprived him of a fair trial and required reversal for a new trial. U.S.C.A. Const. Amend. 14.

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Sharon B. Jacobs of Chaykin, Karlan & Jacobs, Coral Gables, for appellant.

Jim Smith, Atty. Gen., and Calianne P. Lantz, Asst. Atty. Gen., Miami, for appellee.

SHAW, Justice.

Arango, convicted of first-degree murder and sentenced to death, see 411 So.2d 172, appeals the denial of his amended motion for post-conviction relief wherein he alleged a discovery violation under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Arango previously sought post-conviction relief in this Court, *Arango v. State*, 437 So.2d 1099 (Fla.1983). He argued that the state withheld exculpatory evidence supporting his theory of defense that he and the victim were overpowered by three armed Latin males who murdered the victim and then escaped, one of them jumping off the bedroom balcony. Arango had told this story to detective Nieves at the scene and also had given similar testimony at trial, although stating that he did not know if one of the men left by way of the balcony.

Arango argued to this Court that he discovered long after his trial and direct appeal that a semi-automatic pistol was found under the balcony of his apartment the day following the crime and that it was turned over to the police investigating the murder. He further argued that the state committed a *Brady* violation in not producing the gun following his discovery requests which included:

> 3. Any physical evidence or witness statements which corroborate the Defendant's statements to Detective Diaz [sic] that other Latin males entered the apartment and committed the homicide.

The state argued that the pistol was not disclosed because it was unrelated to the case. We found that Arango had made a prima facie case requiring a hearing on the claimed *Brady* violation and remanded to the trial court for that purpose. *Id.* at 1104-05.

The parties stipulated that the matter could be determined upon a review of the entire record with the addition of deposition testimony and accompanying exhibits. The deposition testimony of Detective Young, the lead homicide investigator on the case, was that at the time of the investigation she was "relatively new in the section," that she did not and still does not think the pistol, found under Arango's balcony with some casings, was involved in the crime, but that her opinion had changed as to whether she should have informed the prosecutor about the pistol. She testified that she processed the pistol as part of her investigation surrounding the homicide. The gun registration admitted into evidence showed that the pistol was purchased from the Tamiami Gun Shop two days before the murder by one Antonio Garcia. The police could not find the listed address, so they assumed that it did not exist. A computer search turned out more than thirty persons with the same name. Apparently no further attempt was made to locate the owner.

The prosecutor testified that he would have informed the defense about the pistol had he known of its discovery and presumed it to the homicide. The defense attorney testified that production of the gun would have affected his trial strategy.

[1, 2] Although the prosecutor did not personally suppress the evidence, the state may not withhold favorable evidence at the hands of the police, who were closely with the prosecutor. *Smith v. Florida*, 410 F.2d 1349 (5th Cir.1969). In *Brady*, the Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87, 83 S.Ct. at 1196-97. The

A.3

elements of a *Brady* violation that deny an accused a fair trial are "(a) suppression by the prosecution after a request by the defense (b) the evidence's favorable character for the defense, and (c) the materiality of the evidence." *Moore v. Illinois*, 408 U.S. 786, 794-95, 92 S.Ct. 2562, 2569, 33 L.Ed.2d 706 (1972).

Present in the instant case is state suppression of evidence favorable to the defense following a defense request for disclosure. Although it may be a coincidence, the fact remains that the gun was recently purchased and located in a place that would support Arango's defense. Our final inquiry is whether the suppressed exculpatory evidence was material.

[3, 4] The applicable materiality standard depends upon one of three contexts in which the suppression occurred. *United States v. Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). In the first, where the prosecutor has knowingly used perjured testimony, the judgment must be set aside if "there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *Id.* at 103, 96 S.Ct. at 2397 (footnote omitted). The second situation, as in *Brady*, is where the defense has made a specific request for the evidence (Brady requested the extrajudicial statements of his accomplice). The judgment must not be set aside if "the suppressed evidence might have affected the outcome of the trial." *Id.* at 104, 96 S.Ct. at 2398. In the third situation, where the request is general ("all *Brady* material" or "anything exculpatory") or there has been no request at all, the judgment must be set aside if the suppressed evidence "creates a reasonable doubt that did not otherwise exist." *Id.* at 112, 96 S.Ct. at 2402. The latter standard is less strict than "demonstrating that newly discovered evidence probably would have resulted in acquittal." *Id.* at 111, 96 S.Ct. at 2401 (footnote omitted) but requires a greater showing than the specific request standard.

[5, 6] There is no issue regarding the prosecutor's knowing use of perjured testimony in the present case. We therefore must determine whether the defense discovery request was general or specific under *Agurs*, wherein general requests were characterized as asking for "all *Brady* material" or "anything exculpatory." We find that the request in the present case is more akin to the *Brady* request deemed specific in *Agurs*, as it gave the prosecutor "notice of exactly what the defense required." Moreover, we believe that if there is uncertainty concerning the characterization of a request, the materiality standard applicable to specific requests should be used. *See Chaney v. Brown*, 730 F.2d 1334, 1344 (10th Cir.1984) (citing *King v. Ponte*, 717 F.2d 635, 640 (1st Cir.1983) and *United States ex rel. Marzeno v. Gengler*, 574 F.2d 730, 736 (3d Cir.1978)).

The question then becomes whether the defense's access to the evidence of the recently purchased gun's discovery under the balcony might have affected the outcome of the trial. We make this determination mindful that the goal is "not punishment of society for misdeeds of a prosecutor [or the state] but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." *Brady*, 373 U.S. at 87, 83 S.Ct. at 1197. "When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable." *Agurs*, 427 U.S. at 106, 96 S.Ct. at 2399.

[7] Bearing in mind the foregoing, we find that the state's suppression of the recently purchased gun's discovery, following Arango's specific request for evidence corroborating his statements that other Latin males entered his apartment and committed the crime, deprived him of a fair trial. We find that the outcome of the trial might have been affected. The prosecutor was able to argue to the jury that "nothing was kept from you, whatever we had is on the table," that Arango's testimony was "not real because it does not jive [sic] with the physical evidence" and therefore "does not create a reasonable doubt." We

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find that due process requires retrial under these circumstances.*

We therefore reverse the trial court's denial of post-conviction relief, vacate the sentence of death, and remand to the trial court for a new trial.

It is so ordered.

BOYD, C.J., and OVERTON, ALDERMAN, McDONALD and EHRLICH, JJ., concur.

ADKINS, J., dissents.

Ronald Edward HILL, Petitioner,

v.

STATE of Florida, Respondent.

No. 64493.

Supreme Court of Florida.

April 4, 1985.

Defendant was convicted in the Circuit Court, Polk County, Oliver L. Green, Jr., of escape and aggravated assault, and defendant appealed. The District Court of Appeal, Second District, 439 So.2d 971, held that defendant was not entitled to discharge under constitutional speedy trial principles, and defendant appealed. The Supreme Court, Alderman, J., held that defendant waived protection of speedy trial rule and therefore was not entitled to discharge under constitutional speedy trial principles.

Affirmed.

Ehrlich, J., dissented and filed opinion in which Shaw, J., concurred.

* If the pistol itself is unavailable at this late date, defense counsel should be allowed to inform the jury of the discovery and location of the pistol and the fact of its purchase two days before the murder.

Criminal Law ⇐577.10(8, 9)

Where defense counsel's abrupt departure from case because of conflict of interest among defendants not only led to redocketing of pretrial conference but also to continuance of defendant's trial to facilitate appointment of substitute counsel and his preparation for trial, failure to hold trial within speedy trial period was attributable to defense counsel's withdrawal and the resulting continuance necessitated by it, and defendant waived protection of 180-day speedy trial rule as result of the continuance and was not entitled to discharge under constitutional speedy trial principles; disapproving *Ehn v. Smith*, 426 So.2d 570. U.S.C.A. Const.Amend. 6; West's F.S.A. RCrP Rule 3.191.

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Jerry Hill, Public Defender, and Paul C. Helm, Asst. Public Defender, Chief, Appellate Div., Tenth Judicial Circuit, Bartow, for petitioner.

Jim Smith, Atty. Gen., and William J. Munsey, Jr., Asst. Atty. Gen., Tampa, for respondent.

ALDERMAN, Justice.

We have for review the decision of the District Court of Appeal, Second District, in *Hill v. State*, 439 So.2d 971 (Fla. 2d DCA 1983), which expressly and directly conflicts with *Ehn v. Smith*, 426 So.2d 570 (Fla. 5th DCA 1983).

Petitioner and five other inmates were charged with escape from Polk Correctional Institution, assault by a prisoner, and criminal mischief. The 180-day speedy trial period began to run on June 10, 1982, when petitioner was recaptured. On September 9, 1982, the public defender's office was appointed to represent all six inmates. At the pretrial conference on November 2, 1982, the assistant public defender moved to withdraw as defense counsel for all six inmates on the basis of conflict created by

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FILED

APR 1 0 1987

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

CRIMINAL DIVISION

CASE NO. 86-5376 (Gable)

THE STATE OF FLORIDA

Plaintiff

vs

LUIS CARLOS ARANGO

Defendant

MOTION FOR PRODUCTION OF FAVORABLE EVIDENCE

The Defendant, by and through his undersigned attorney pursuant to RCrP 3.220(a)(2) and (5) and the Due Process Clause the Fourteenth Amendment to the United States Constitution, [illegible] this Honorable Court to order the State to disclose to the Defendant the following specifically requested favorable evidence which is in the possession and custody of the State

1. Any witness accounts or statements or physical evidence indicating that other persons in addition to the Defendant may have been present were in the Defendant's apartment at the time of the homicide

2. Any physical evidence indicating that the Defendant did not fire the murder weapon or that another person did, in fact, fire the murder weapon

3. Any physical evidence or witness statements which corroborate the Defendant's statements to Detective Diaz that other Latin males entered the apartment and committed the homicide

4. Any police investigation report made to the police which tends to establish the Defendant's innocence or to impeach or contradict the testimony of any witness whom the State will call at the time of the trial of this case

It is prayed that this Court order the disclosure of the above favorable evidence including any such evidence which is work product but discoverable as favorable evidence under State v.

F.6

[redacted]illespie, 227 S[redacted] ...ially in camera ... the entire State and investigatory agency files ... and not the State determines what should be disclosed ... State and investigatory agency files to be preserved ... available for the appellate record ... that any ... to favorable evidence may be properly preserved.

The defense contends that the evidence sought cannot ... discovered except ...

Respectfully submitted,

[redacted]
[redacted]
[redacted]
Miami, Florida 33[redacted]
Attorney ...

Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of ... going was delivered ... hand to ... Assistant State ... 1351 NW 12th Street, Miami, Florida this ... day of ...

Attorney ...

A-9

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

Case No. 80-5404 (Gable)

THE STATE OF FLORIDA,

Plaintiff,

vs.

LUIS CARLOS ARANGO,

Defendant.

---

DEPOSITION OF DETECTIVE ANGEL NIEVES

The oral examination of DETECTIVE ANGEL NIEVES, taken pursuant to Notice of Taking Deposition on behalf of the Defendant, before LARRY DALE PATTERSON, a Shorthand Reporter and Notary Public in and for the State of Florida at Large, on the 22nd day of May, 1980, at 2:09 p.m., at Room 810, Law Library, Metropolitan Justice Building, 135 Northwest 12th Street, Miami, Florida.

* * * * *



A.2

get off of the bed and take his clothes off, and they forced him to change clothes, and they forced him to pick up some .38-caliber rounds, ammunition, off of the floor and put them into his pocket.

Then he stated that while he was putting the [illegible] rounds into his pocket, the unknown subjects fled the apartment.

He said two of the subjects fled out the kitchen door, and one of them jumped off of the bedroom balcony.

He went on to say--you have a copy of the report--that this subject, listed as Number 1, is the one that jumped off the bedroom balcony.

Q Did he say anything? I have your report.

What I am getting at is, did he say anything in that initial meeting in the apartment that is not reflected in your report?

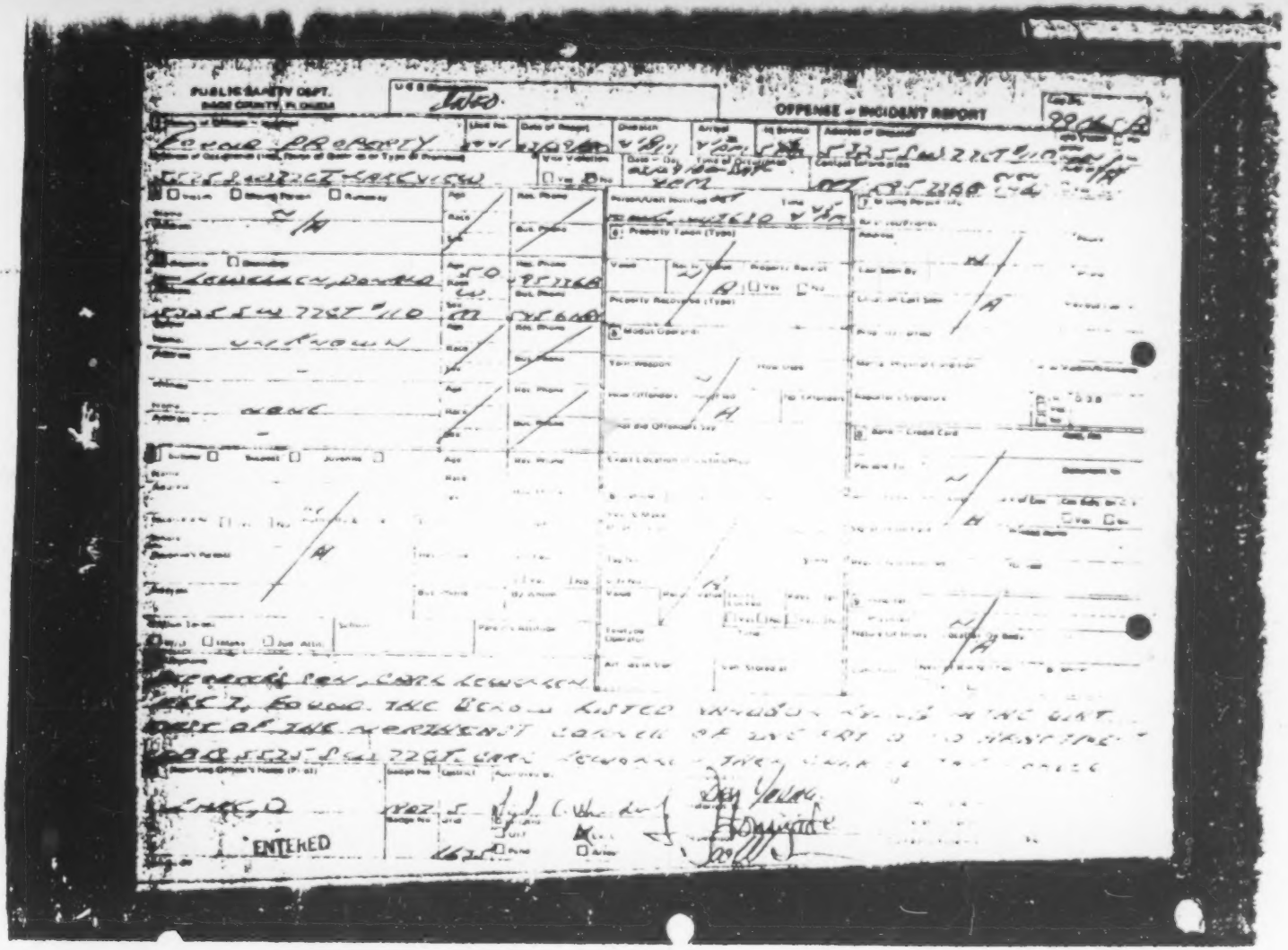
A No.

Q I just don't want to be in a situation at trial where you say, "I left out a sentence where he admitted this was all lies," or something to that effect.

A No, he never gave me a statement. He stuck to this; however, when we took him back to the--

Q We will get to that.

Now after he finished that statement, what did you do?



PUBLIC SAFETY DEPT.
DADE COUNTY, FLORIDA

OFFENSE or INCIDENT REPORT

LOCAL PROPERTY

ENTERED

| | | | | |
|---|---|---|---|---|
| | REVISED PROPOSED | | N/A | 8/21/68 |

ALL WORK TO BE PERFORMED WITHIN THE EXISTING BUILDING AS SHOWN ON THE CONTRACT DRAWINGS EXCEPT WHERE NOTED OTHERWISE.

THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR ALL DAMAGE THAT MAY BE CAUSED TO THE EXISTING BUILDING AND ITS CONTENTS DURING THE PERFORMANCE OF THE CONTRACT. ANY DAMAGE CAUSED BY THE CONTRACTOR SHALL BE REPAIRED TO THE SATISFACTION OF THE OWNER AT NO ADDITIONAL COST TO THE OWNER.

THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE EXISTING BUILDING AND ITS CONTENTS DURING THE PERFORMANCE OF THE CONTRACT. ANY DAMAGE CAUSED BY THE CONTRACTOR SHALL BE REPAIRED TO THE SATISFACTION OF THE OWNER AT NO ADDITIONAL COST TO THE OWNER.

| | | | |
|---|---|---|---|
| CASTER | 1907 | | |

DADE COUNTY, FLORIDA

PROPERTY CLERK

☐ HOLD FOR FURTHER INVESTIGATION
☐ OTHER AGENCY

CASE NO.

TYPE OF CASE

SUBJECT / SUSPECT

INCARCERATED

| ITEM NO. | QUANTITY | DESCRIPTION |
|---|---|---|
| 1 | 1 | CAL SQUARE AUTOMOBILE LICENSE (P.P.K.S.) |
| 2 | 6 | |

ADDED LAST ITEM

ACCORDING TO PITT

INTERVIEW 5/17/79

SIGNATURE 2/1/79

SATISFY KNOW

SEE:

I hereby acknowledge that the above list represents all property taken from my possession and that I have received a copy of this receipt.

SIGNATURE OF RECEIVED BY

PRINT OR TYPE NAME RECEIVED BY

RECEIVED BY

RECEIVED BY

RECEIVED BY

RECEIVED BY

I hereby acknowledge that the above list represents all property impounded by me in the official performance of duty as a Deputy Sheriff.

DISTRICT OR DIVISION 5 BADGE NO. 2807

IMPOUNDING OFFICER (S)

| REASON | DATE AND TIME RECEIVED |
|---|---|
| STORAGE | 03-29-80 5:10 |
| REASON | DATE AND TIME RECEIVED |
| REASON | DATE AND TIME RECEIVED |
| REASON | DATE AND TIME RECEIVED |
| REASON | DATE AND TIME RECEIVED |

1 COPY (REV. 2-79)

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# LABORATORY ANALYSIS REQUEST

P. S. D. CASE No.

ANALYTICAL SECTION

FORENSIC II SECTION

OTHER POLICE AGENCY

Agency Case No.

Signature of Submitter

Date

11-15

33403

1163

Miami FL

14755 SW 57 ST

| PISTOL | REVOLVER | NO. SHOT | WEIGHT | GAUGE | EYES | COMPLEXION |
|---|---|---|---|---|---|---|
| WHITE | 12-5-32 | 54 | 200 | Fair | BR | Med |

BIRTHPLACE Cuba — PERMANENT RESIDENCE SAME — TIME FLORIDA RESIDENT 8 years

OCCUPATION Welder Self Employed

NAME OF MANUFACTURER WALTHER — SERIAL NO. 235595

TYPE OF ARM (AUTO, REVOLVER) AUTO — STYLE —

FINISH & BARREL LENGTH BRUSH — CALIBER 380 — OUTSIDE DIMENSIONS PARTS

PURPOSE FOR ARM'S USE Collection

THIS INFORMATION IS FURNISHED BY THE PURCHASER AND CONTAINS NO ERRORS

PURCHASER'S NAME GARCIA ANTONIO — SERIAL NO. 235595

NAME OF MANUFACTURER WALTHER — STYLE —

TYPE OF ARM (AUTO, REVOLVER) AUTO — OUTSIDE DIMENSIONS PARTS

FINISH & BARREL LENGTH BRUSH — CALIBER 380

NAME OF FIREARMS DEALER LOMBARD RANGE & GUN SHOP

TIME & DATE OF PURCHASE 5:15 PM 3/06/80 — 1015 S. FEDERAL HIGHWAY, MIAMI, FLORIDA 33109

I/WE HEREBY CERTIFY THAT THE PURCHASER WAS FURNISHED WITH A PERIOD OF 72 HOURS PRIOR TO ACQUIRING POSSESSION OF THIS ARM (PISTOL, REVOLVER, OTHER FIREARM)

K Antonio Garcia — E.80165

SIGNATURE OF PURCHASER — SIGNATURE OF WITNESSING SALESCLERK

MAIL TO PUBLIC SAFETY DEPARTMENT, R & I BUREAU, 8300 N.W. 53rd St., Miami, Florida 33166 WITHIN 72 HOURS